

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Assistant Administrator's or his or her representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his or her name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

**§ 228.19 Oral and written arguments.**

(a) The presiding officer may, in his or her discretion, provide for oral argument at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver,

including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, the party shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state their arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

**§ 228.20 Recommended decision, certification of the transcript and submission of comments on the recommended decision.**

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Assistant Administrator. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Assistant Administrator the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Assistant Administrator shall give notice thereof in the FEDERAL REGISTER, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

(d) Within 20 days after the notice of receipt of the recommended decision

has been published in the FEDERAL REGISTER, any interested person may file with the Assistant Administrator any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the 20-day period to the Assistant Administrator at the previously mentioned address.

**§ 228.21 Assistant Administrator's decision.**

(a) Upon receipt of the recommended decision and transcript and after the 20-day period for receiving written comments on the recommended decision has passed, the Assistant Administrator shall make a final decision on the proposed regulations and waiver, where applicable. The Assistant Administrator's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Assistant Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Assistant Administrator's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(4) The Assistant Administrator's decision shall be published in the FEDERAL REGISTER. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

**PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972**

**Subpart A—General Provisions**

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FIGURE 1 TO PART 229—DRIFT GILLNET FINGER CONFIGURATION AND EXTENDER REQUIREMENTS

AUTHORITY: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

SOURCE: 60 FR 45100, Aug. 30, 1995, unless otherwise noted.

**Subpart A—General Provisions**

**§ 229.1 Purpose and scope.**

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1387) that provide for exceptions for the taking of marine mammals incidental to certain commercial fishing operations from the Act's general moratorium on the taking of marine mammals.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery